CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Authorize the City Manager to sign the service/maintenance agreement for current police computerized information systems with Data 911 ($58,265) (PD)

DATE: October 1, 2003

PREPARED BY: JERRY J. ADAMS, CHIEF OF POLICE

RECOMMENDED ACTION: That the City Council authorize the City Manager to sign the Service/Maintenance Agreement for current police information systems with Data 911.

BACKGROUND INFORMATION: Over the past four years the Lodi Police Department has purchased new computer systems from Data 911 consisting of Computer Aided Dispatch, Records Management System, Report Writing, and Mobile Data Computers. With the systems now in place, a maintenance agreement is needed to provide for receiving software upgrades/updates no longer covered under warranty. This maintenance agreement will expire on June 30, 2005 and is included in the FY 03-05 budget.

City Attorney Randall Hays has approved the Data 911 Service/Maintenance Agreement as written.

FUNDING: $58,265 from 2003-2004 Police Operating Budget, Line Item #7335.

Funding Approved By:

_____
Vicky McAthie, Finance Director

_____
Jerry J. Adams
Chief of Police

cc: City Attorney

APPROVED: _____
H. Dixon Flynn -- City Manager

Software Enhancement Services and MDS Extended Warranty Agreement

This Agreement is made as of _____ (Agreement Date) at Alameda, California, by and between Hubb Systems, LLC dba Data911, 2021 Challenger Drive, Alameda, CA 94501 and the City of Lodi (Client).

1.   SOFTWARE. Subject to the terms and conditions set forth in this Agreement, Data911 shall provide services hereinafter described with respect to Client's application software identified in Exhibit "A".

2.   HARDWARE. Subject to the terms and conditions set forth in this Agreement, Data911 shall provide maintenance and repair service for the hardware described in Exhibit "A".

3.   PAYMENT. Client shall pay Data911 for services rendered as specified in Exhibit A to Software and Hardware specified in Exhibits B and C. Payment shall be made directly to Data911. Data911 shall submit all billings for said services to Client in the manner specified in Exhibit A.

4.   EQUIPMENT. Data911 shall, at its sole cost and expense, provide tools and equipment which may be required for furnishing services pursuant to this Agreement.

5.   SOFTWARE SERVICE. Data911 offers this software enhancement and services agreement and promises to provide the services detailed in Exhibit "B" Software Enhancement Services Statement of Work.

6.   HARDWARE SERVICE. Data911 offers this full service hardware maintenance agreement and promises to provide the services detailed in Exhibit "C" MDS Extended Warranty Statement of Work. Services include the repair of hardware submitted under this contract and specified in the equipment list in Exhibit "A", Schedule "A" and will include all parts and labor subject to the conditions outlined herein.

7.   TERM. Commencement date July 1, 2003 and the Termination date is June 30, 2005.

6.   EXHIBITS. All exhibits referred to herein are attached hereto and are reference incorporated herein as though set forth in full. Exhibit "A" includes a complete list of the software modules, equipment, costs, term of service, contract term, billing procedures and payment methods, which shall be covered under this agreement. Exhibit "B" details the Software Enhancement and Services to be performed. Exhibit "C" details the MDS Extended Warranty Statement of Work for the RMA procedure, and the parts and labor availability. Exhibit "D" refers to General Terms and Conditions.

EXECUTED as of this day first above-stated.

_____   _____
H. Dixon Flynn, City Manager   Bret R. Hubbard, President, Data911

Attest:

_____
Susan J. Blackston , City Clerk

Approved as to form:

_____
Randall A. Hays, City Attorney

EXHIBIT A

I. Software and Mobile Data System Equipment List, Contract Term, Price Schedule.

	Fiscal Year 2003	2004 Fiscal Year
CAD Server 1	$3,000.00	$3,200.00
CAD First Seat 1	$7,500.00	$8,000.00
CAD Additional Seats	$5,625.00	$6,000.00
RMS/RPW Server 1	$1,875.00	$2,000.00
RMS/RPW Seat 7	$3,150.00	$3,360.00
RX Mobile Server 1	$4,500.00	$4,800.00
RX Mobile Seat 24	$5,382.00	$5,740.80
ECOMM Server 1	$3,000.00	$3,200.00
ECOMM Seat 3	$675.00	$720.00
MX Seat 24	$1,782.00	$1,900.80
Message Switch 1	$4,500.00	$4,800.00
DOJ CLETS 1	$2,250.00	$2,400.00
E911 1	$2,250.00	$2,400.00
Oracle Enterprise Server	$5,700.00	$5,700.00
Oracle Lite	$456.00	$456.00
VMS O/S 1	$860.00	$860.00
MDS Maintenance 24	$5,760.00	$5,760.00
TOTAL	$58,265.00	$61,297.60

1.   Hardware Covered.

1535, 3968, 4740, 4741, 4742, 4743, 4744, 4745, 4746, 4747, 4748, 4749, 4777, 4778, 4779, 4780, 4781, 4782, 4783, 4784, 4785, 4786, 7658, 7659

II. Term

1.   A 2-year term commencing July 1, 2003 and terminating June 30, 2005.

2.   This Agreement may by terminated by either party upon ten days notice to the other in the event of any material default hereunder by the other party.

3.   In the event Contractor fails to abide by the terms, covenants and conditions of this Agreement, City shall give Contractor written notice to correct the default and, if the same is not corrected, or substantial steps are not taken toward accomplishing such correction, within 10 City business days after City's notification of same, City may terminate this Agreement forthwith upon giving Contractor written notice sent via certified mail; and (ii) in the event of non-appropriation (the failure of City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of any hardware/software services), City shall have the right to terminate the this Agreement at the end of any fiscal year of City, upon written notice of such termination not less than 60 days prior to the end of such fiscal year, and notifying Contractor of any anticipated termination.

4.   This Agreement may be terminated by Data911 if the Software or Mobile Data Systems supported are altered or enhanced by any entity (including Client) other than Data911, anything to the contrary herein notwithstanding.

5.   No termination hereunder shall release Client from its obligation to make payment for services rendered through the date of termination.

III. Fees. Billing Procedures and Payment Method

1.   The first fiscal year payment is due immediately. The second fiscal year payment is due July 1, 2004.

2.   Client shall pay Data911 for services rendered based on the costs, equipment and terms as specified. Payment shall be made directly to Data911 for services rendered pursuant to this Agreement. Data911 shall submit an invoice for said services to Client to the address listed below:

Lt. Bryan A. Noblett
Support Services Division
Lodi Police Department
230 W. Elm St.
Lodi, CA 95240
Office: (209) 333-6788
Fax: (209) 333-6792

3.   Any and all applicable tax payments associated with goods or services provided per this Agreement are not included in the fees and will be charged at the prevailing rate upon payment due.

EXHIBIT B

I. SOFTWARE ENHANCEMENT SERVICES STATEMENT OF WORK

Data911 agrees to provide Client during the term of this Agreement, under the fees scheduled herein and subject to the provisions set forth below, the services hereinafter described with respect to Client's application software.

1. For Data911 Software Products, a two-hour response time during normal business hours (Monday – Friday, 0800 – 1700) for emergency support requests. An emergency is defined as an application failure of the software defined in Exhibit A. Response is defined as the point in time when Data911 begins diagnosis of the reported problems. Client shall use the method of communication that is identified by Data911 for emergency service requests. Modem on-line software technical support service shall be used when applicable. Data911 shall provide 24-hour response time for on-site software emergency service, when required. Travel and accommodations charges incurred will be billed to Client.

2. Provision of media and for all new releases/modifications to the software modules listed in Exhibit A at no additional cost to Client. Installation, conversion of data, and training will be charged at a quoted hourly/not to exceed rate at the election of Client.

3. Telephone consultation regarding:

   (a). Questions related to public safety data practices and procedures.
   (b). System administration consultation and assistance; e.g. paper flow and retention.
   (c). Exceptions to Standard Procedures.
   (d). Modification of Client's computer software or purchase of additional hardware.

II. NON-CHARGEABLE SERVICES

1. There shall be NO CHARGE for any new releases or enhancements to Data911's Software as provided to all its clients under Enhancement and Service Agreements.

Software Enhancement Services and MDS
Extended Warranty Agreement

III. CHARGEABLE SERVICES

1. Items listed below are not under Data911's control, and are therefore chargeable. Client will be billed at Data911's then-current rate or a fixed charge to be agreed upon.

    Examples:

    (a).   Recovery of lost data caused by Hardware or operator error.

    (b).   Assistance with Word Processing and/or other software, including Operating System software, not written by Data911.

    (c).   Assistance due to User failure to follow prescribed procedures or exercise normal care in data processing.

    (d).   Research, review, and revision of operational work.

    (e).   Upgrading of Client hardware system, new operating system and data conversion.

    (f).   Re-training on modules already operational.

    (g).   Additional copies of software documentation.

    (h).   Installation or interfacing of additional hardware, software, and upgrades.

    (i).   Cabling.

    (j.)   After hour emergency services.

    (k.)   Software changes mandated by local, county, state or federal authorities.

Data911 time is chargeable in 15 minute increments for chargeable services requested/completed during normal business hours.

A minimum charge of 1 hour applies for all chargeable services requested/completed during non-business hours.

Travel and accommodations charges for on-site service calls will be billed to Client.

EXHIBIT C
MDS EXTENDED WARRANTY
STATEMENT OF WORK

I. Services

Services provided are limited to, during the term of this contract, Data911's repair or replacement, at Data911's discretion, of any part or component, which prohibits the proper and normal operation of the Data911 equipment specified in Exhibit "A". Maintenance services include, but are not limited to, all parts and/or labor required to identify the failure and to repair the equipment to guarantee proper working condition of the product returned. No on-site Contractor representative will be included as a part of these services.

II. Return Material Authorization Procedure

Upon determination that a hardware failure has occurred the client will contact Data911 by telephone at (510) 865-9100 ext. 125 to obtain a Return Material Authorization number. A qualified Data911 technician will provide initial telephone consultation to assist the client in problem analysis and determination, as some problems may be in other layers of the system and therefore will not require the return of a unit.
Equipment is to be removed and returned to the factory, shipping prepaid by Client. Prior to equipment shipment, Client is to call Data911 for a Return Material Authorization (RMA) number. The RMA number is to be clearly marked on shipping label or shipping container. The unit will be repaired and shipped by Data911 back to Client via ground shipping service within 10 business days of receipt. Client is to pay for any expedited return shipping service.

III. Parts and Labor Availability

Data911 will guarantee that for a period of ten years from the time of purchase of new equipment, availability of parts and labor. If parts become unavailable within the ten-year period, Data911 will replace the obsolete equipment to equivalent functionality at no additional charge.

EXHIBIT D
GENERAL TERMS AND CONDITION

I. General

1. Data911 shall have full access to Client's Mobile Data System computers for purposes of performing its obligations under this Agreement. Data911 shall not be responsible for the application software deployed on computers returned for service, however Data911 will protect and support Clients obligations to third party software licensers when so advised of any obligations Client may have in this regard. A 2400 Baud Modem, and supporting telephone facility and services is to be supplied by the Client.

2. Client shall be responsible for ensuring that all of its files are adequately duplicated for reloading on a current basis ("backed-up" as used in the trade) in accordance with the highest and most up-to-date standards of the computer industry and Client, shall indemnify Data911 against Client's failure to do so.

3. Custom hardware development and programming for Client or special program modifications are not included under this agreement, but may be requested and quoted for Client's consideration.

4. Client assures that all units identified by this Agreement are in good working order and condition as of the this Agreement Date.

5. Data911 shall have no liability whatsoever for general damages, extraordinary costs, loss of profits, or incidental, indirect, special or consequential damages (even of it has been apprised of the likelihood thereof) arising out of or in connection with Data911's obligations or performance hereunder or any breach hereof. In the event of Data911's material breach of this Agreement, Client may cancel this Agreement and refuse to pay Data911's invoice for the particular service, which is the immediate subject of the breach, such rights being the sole and exclusive remedies available to Client. Delay or failure of performance by Data911 shall not constitute a breach hereunder where the same is due to any cause or condition beyond Data911's reasonable control.

    Data911 shall not be responsible for, and Client shall indemnify, defend and hold harmless Data911 from and against, and release Data911 from any claim by it with respect to, any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities of, by or with respect to third parties, to the extent such arise from Client's negligence or willful misconduct.

6. Should Data911 deem it necessary to refer the enforcement of its right to payment

hereunder to its attorneys, Client shall pay such attorneys' reasonable fees and expenses and costs of suit.

7. Equal Employment Opportunity - during the performance of this Agreement, Data911 agrees as follows:

A. Data911 will not discriminate against any employee or applicant or employment because of race, color, religion, or national origin. Data911 will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rate of pay or their forms of compensation; and selection for training, including apprenticeship. Data911 agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

B. Data911 will, in all solicitations or advertisements for employees placed on or on behalf of Data911 state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. Data911 will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to contracts or subcontracts or standard commercial supplies or raw materials.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns.

9. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

10. Data911 shall not be held to have waived any of the provisions hereof for failure to invoke any of the remedies available to it in the event of any breach by Client of this Agreement and the waiver by Data911 of any provision hereof shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision hereof.

11. The Client may, from time to time, request changes in the Scope of Services of the Agreement to be performed hereunder. Such changes including any increase or decrease in the amount of Data911's compensation, which are mutually agreed-upon by and between the Client and Data911, shall be incorporated in written amendments to this Agreement.

13. All notices required or permitted to be given by either party to the other hereunder shall be in writing, sent by U.S. mail, postage prepaid, addressed to the other party at the address for it mentioned in this agreement or to such other place as may have been given by similar notice by such other party. All notices shall be deemed

given when properly posted except notice of change of address which shall be deemed given when received.

14. This instrument constitutes the complete and exclusive statement of the agreement between the parties and supersedes all contemporaneous and previous agreements and communications, oral or written, between the parties with respect to the subject matter of this Agreement. Any statement, agreement, representation or other communication or expression not contained herein is without authorization of, and shall not be binding on, Data911. This Agreement may not be modified or supplemented except by an instrument duly executed on behalf of the then parties bound hereby including, if the same is a corporation, only by an officer thereof.